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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0197**

In re: the Lawrence B. Schwagerl Trust
Under Agreement Dated April 9, 1999;

C. Thomas Wilson,
Trustee of the Lawrence B. Schwagerl Trust Agreement April 9, 1999,

vs.

Schwagerl Family Farm, LLC;

In the Matter of the Phyllis I. Schwagerl Trust
Under Agreement Dated April 9, 1999;

C. Thomas Wilson,
Trustee of the Lawrence B. Schwagerl Trust dated April 9, 1999,

vs.

Diana Miller and Jerome Schwagerl, Co-Trustees,
Phyllis L. Schwagerl Trust Agreement, April 9, 1999.

**Filed September 25, 2023
Affirmed
Bryan, Judge**

Big Stone County District Court
File Nos. 06-CV-15-246, 06-CV-19-232, 06-CV-17-110, 06-CV-19-209

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Considered and decided by Bryan, Presiding Judge; Smith, Tracy M., Judge; and Florey, Judge.*

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellants challenge an order requiring the current trustees of two related trusts to decide how to apportion respondent-trustee's costs, disbursements, and fees. Appellants first contest certain factual findings made by the district court. Second, appellants argue that the district court erroneously failed to limit its order only to the trust that respondent-trustee was appointed to administer. We affirm.

FACTS

Lawrence and Phyllis Schwagerl were married for 53 years and had eight children, including respondent Barbara Higinbotham (Barbara) and appellants Jerome Schwagerl (Jerome) and Diana Miller (Diana).¹ The couple had accumulated 792.12 acres of farmland, and on April 9, 1999, Lawrence executed a trust agreement creating the Lawrence B. Schwagerl Trust (the Lawrence Trust). On the same day, Phyllis executed a trust agreement creating the Phyllis I. Schwagerl Trust (the Phyllis Trust). Each trust included an undivided one-half interest in the couples' real estate holdings and various cash assets. Lawrence and Phyllis were named trustees of both trusts. Lawrence died shortly thereafter.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

¹ Because many of the Schwagerl family members share a last name, we refer to them by their first names.

In 2011, Phyllis, in her capacity as trustee of both trusts, sold all 792.12 acres of farmland through a contract for deed to Schwagerl Family Farm, LLC, a company owned by Jerome² and his wife. Barbara objected to the sale of the farmland and, along with two other Schwagerl children, began to question Phyllis's management of the Lawrence Trust. In December 2015, Barbara brought a petition in district court seeking the removal of Phyllis as the trustee of the Lawrence Trust and an accounting of the assets in the Lawrence Trust, believing that Phyllis had improperly transferred assets out of the Lawrence Trust. While the petition was pending, Phyllis named Diana a co-trustee of the Lawrence Trust in 2016, and together, Phyllis and Diana transferred all the cash assets out of the Lawrence Trust leaving only the undivided, one-half vendor's interest in the real estate, subject to the contract for deed with Schwagerl Family Farm LLC.³ There have been no payments made to the Lawrence Trust on the contract for deed for years. Instead, payments on the contract for deed have been made only to the Phyllis Trust.

Given the nature of the allegations and Phyllis's unwillingness to provide information to Barbara, the district court ordered that a neutral trustee be appointed as follows:

² The parties disputed whether Jerome became a trustee of the Lawrence Trust prior to the sale. Article 7 of the Lawrence Trust agreement provided for trustee succession, specifying that Jerome and one other child would join Phyllis as co-trustees of the Lawrence Trust upon Lawrence's death. Although a 2008 federal Farm Service Agency form included Jerome's signature on behalf of the Lawrence Trust and the typed word "TRUSTEE" next to it, Jerome denied that he was ever a trustee of the Lawrence Trust and signed a formal declination of appointment as trustee of the Lawrence Trust in April 2016. On March 7, 2017, Jerome accepted appointment as a co-trustee of the Phyllis Trust.

³ In a contract for deed, "[t]he vendee has equitable title, and the vendor retains the legal title as security for the purchase price." *In re Butler*, 552 N.W.2d 226, 229 (Minn. 1996).

Because of the pending litigation, Phyllis Schwagerl's history of being unwilling to provide any amount of information, this Court will appoint a neutral third party, independent co-trustee to work with Diana Miller and Phyllis Schwagerl to provide this Court and [Barbara] Higinbotham with relevant accounting . . . the Court shall appoint a trustee to either work with or replace the current co-trustees and provide an accurate accounting of the Trust.

The parties eventually agreed to the appointment of respondent-trustee C. Thomas Wilson, and the district court appointed Wilson "as the neutral co-trustee responsible for reporting and accounting the assets" of the Lawrence Trust. The order also stated that Wilson "shall be entitled to reasonable compensation for his services and reimbursement for expenses from the Trust."

Phyllis passed away on February 27, 2017. On December 28, 2017, Barbara petitioned to remove Diana as trustee and appoint a neutral successor trustee to recover the Lawrence Trust assets that Phyllis and Diana transferred to the Phyllis Trust. The district court subsequently froze all the assets in the Phyllis Trust. The trustees were allowed to pay income tax due on the Phyllis Trust, but no other assets could be transferred, disposed of, or distributed without court order. During this time, Wilson worked to determine the circumstances of transfers and issued a report with factual statements that were later adopted by the district court.

The district court held a trial on November 8 and 9, 2018, subsequently issuing its Findings of Fact, Conclusions of Law, and Order on April 9, 2019. The court found that Phyllis and Diana had breached their fiduciary duties to the Lawrence Trust and therefore removed Diana as trustee. The district court determined, "It is necessary to appoint a

trustee to fill the vacancy and to pursue recovery of Family Trust assets that were transferred to Phyllis, the Phyllis Trust, and Schwagerl Family Farm, LLC, in breach of the trustees' fiduciary duties." The district court appointed Wilson for these tasks as successor trustee of the Lawrence Trust. The district court further determined that Wilson had been previously appointed to "investigate, report, and account for the assets of the [Lawrence Trust]," and subsequently denied post-trial motions.

Diana, Jerome, and Schwagerl Family Farm appealed the district court's decision. They moved for a stay pending appeal, but the district court denied the motion. The district court reasoned that both trusts required ongoing administration "and to hamstring the trustee at this time, when a neutral trustee has been appointed, would result in unnecessary oversight by the court and potentially harm the trust." Thus, the district court's order remained in effect, directing Wilson as successor trustee "to pursue recovery of all assets of the Lawrence Schwagerl Trust, including but not limited to any CD's improperly closed or transferred out of the trust and any real estate sold or transferred out of the Trust, against any parties who may be liable to the Trust."

On appeal, this court interpreted the trust agreement as giving the farm property to Phyllis. *In re Tr. of Lawrence B. Schwagerl Tr. Under Agreement Dated Apr. 9, 1999*, No. A19-1814, 2020 WL 5359409, at *4-5 (Minn. App. Sept. 8, 2020) (*Schwagerl I*).⁴ We determined "if the real estate interests were in the family trust, Phyllis's authority [as trustee] regarding those interests was . . . the same as it would have been had she owned

⁴ During the pendency of *Schwagerl I*, Wilson pursued recovery of assets on behalf of the Lawrence Trust.

those interests outright.” *Id.* at 5. After finding that Phyllis did not breach her fiduciary duty to the trust, we stated, “the district court’s appointment of a successor trustee is reversed as unnecessary.” *Id.* at *6.

The Minnesota Supreme Court granted review and affirmed in part, reversed in part, and remanded. *In re Tr. of Lawrence B. Schwagerl Tr. Under Agreement Dated Apr. 9, 1999*, 965 N.W.2d 772 (Minn. 2021) (*Schwagerl II*). The supreme court affirmed this court’s conclusion that the trust agreement gave the farm to Phyllis. *Id.* at 781. But the court determined that Phyllis as trustee could not treat the property as her own because doing so would violate her duties to the beneficiaries. *Id.* at 783. The supreme court directed this court to “decide whether Diana and Phyllis breached their fiduciary duties in selling the farm real estate and removing the cash assets from the family trust.” *Id.* at 785. In addition, “[i]f Phyllis did breach her fiduciary duties by either selling the farm real estate at a discount or by transferring the cash assets out of the family trust,” the supreme court instructed this court “to address the challenge raised by the respondents regarding the partiality of the neutral trustee.” *Id.* at 782 n.5. On remand, this court found no breach of fiduciary duty, and therefore did not reach the second issue. *In re Tr. of Lawrence B. Schwagerl Tr. Under Agreement Dated Apr. 9, 1999*, No. A19-1814, 2022 WL 997861, at *6 n.9 (Minn. App. Apr. 4, 2022), *rev. denied* (Minn. June 29, 2022) (*Schwagerl III*).

Following the decision in *Schwagerl III*, Diana and Jerome, as the current trustees of the Phyllis Trust, filed a motion requesting, among other relief, the removal of Wilson as trustee of the Lawrence Trust and an order from the district court “[r]efusing to pay C. Thomas Wilson for any alleged work done as trustee.” Wilson then moved the district

court to approve an award of fees and expenses. Diana and Jerome opposed the request for an award of fees and expenses. The district court held a hearing on the matter. Counsel for Wilson argued that the fees were reasonable, and that the Phyllis trust should be included as responsible to pay the requested fees because Wilson's report showed that "all liquid assets had been transferred out of the Lawrence Schwagerl Trust to the Phyllis Schwagerl Trust, and/or to Phyllis individually."

The district court took the matter under advisement and ultimately granted Wilson's motion to approve fees and expenses, noting that no appellate court decision concluded that the district court abused its discretion in appointing Wilson. The district court further found that Wilson's actions were "thorough, sound, reasonable, and substantial" and that he has "acted in good faith in his investigation and report." In making this conclusion, the district court referred to specific findings of fact by number from its April 2019 order, which summarized Wilson's work—including his meetings with counsel, various accountants, bankers, and others, as well as his review of 1,682 pages of documents, tax returns, real property records, correspondence, ledgers, and notes. Based on this summary, the district court characterized Wilson's report as "supported by a thorough investigative process, sound analysis, and substantial documentary evidence." In addition, the district court determined that Wilson's work "was necessary in its entirety and not duplicative" and that Wilson's actions "were in good faith, from proper motives, and done with reasonable judgment." After reviewing the work of Wilson's counsel, the district court also found that Wilson's attorney "has written, filed, and argued motions necessary for the administration of both the trusts and for the beneficiaries." Finally, the district court also

found that the trustee incurred fees “for the benefit of both the Phyllis and Lawrence Trusts.” The district court entered judgment for Wilson for “[c]osts and disbursements in the amount of \$81,710.39” and ordered the current trustees to exercise discretion in apportioning that amount between one or both trusts, stating that this amount was “chargeable to the *Lawrence B. Schwagerl Trust Under Agreement Dated April 9, 1999*, and/or the *Phyllis B. Schwagerl Trust Under Agreement Dated April 9, 1999*, to be apportioned as determined at the discretion of trustees Diana Miller and Jerome Schwagerl.” This appeal follows.

DECISION

Appellants argue that the district court erred in its award of fees and expenses to Wilson. Because the challenged factual findings are supported by the record and because appellants have failed to show that the district court committed prejudicial error in directing Diana and Jerome to apportion the fee award between one or both trusts, we affirm.

We review a district court’s award of fees to a trustee for an abuse of discretion. *In re Tr. Created by Voss*, 474 N.W.2d 199, 201 (Minn. App. 1991). We also review the reasonableness of an award of attorneys’ fees for an abuse of discretion. *In re Margolis Revocable Tr.*, 765 N.W.2d 919, 928 (Minn. App. 2009). Findings underlying those awards, however, will not be set aside unless they are clearly erroneous. *In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012); *see also In re Ruth Easton Fund*, 680 N.W.2d 541, 547 (Minn. App. 2004) (providing that “[f]actual issues embedded in a discretionary determination are reviewed for clear error”). Appellate courts do not reconcile conflicting evidence or “weigh the evidence as if trying the matter de

novo,” *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (emphasis and quotation omitted), and we will only reverse a district court’s factual findings if we are “left with the definite and firm conviction that a mistake has been made,” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

I. *Challenge to the District Court’s Factual Findings*⁵

Appellants make the following three factual challenges to the district court’s fee award: (1) they assert that Wilson was only appointed to give an accounting of the Lawrence Trust, not to do an investigation into the transfers of assets out of the Lawrence Trust; (2) they assert that Wilson was biased and acted in bad faith; and (3) they argue that Wilson’s work did not actually benefit either trust.⁶ We address each challenge in turn.

⁵ We observe that appellants appear to also argue that the district court abused its discretion in concluding that Wilson’s fees were reasonable. However, apart from appellants’ argument regarding the scope of Wilson’s appointment and appellants’ argument that Wilson was biased, we discern no other challenge to the district court’s determination of reasonableness. Therefore, we decline to separately address the district court’s exercise of discretion. Appellants also appear critical of the documents filed in support of Wilson’s request, asserting that they contain insufficient detail. We do not agree and based on our review of the itemization of the fees, submitted to the district court in camera, we discern no abuse of discretion. See *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 776 N.W.2d 172, 180 (Minn. App. 2009) (concluding that there was no violation of Minnesota Rule of Civil Procedure 119 where documents were submitted in camera).

⁶ Appellants also dispute the district court’s finding that Wilson’s work was “necessary in its entirety.” Their challenge to this finding, however, is not based on the evidentiary record but rather based on an interpretation of *Schwagerl I, II, and III*. Appellants argue that because this court concluded that Phyllis did not breach her fiduciary duty, it was not necessary to appoint Wilson. We disagree that the appellate opinions require reversal because no appellate court determined that Wilson’s appointment was an abuse of discretion or otherwise addressed whether the district court erred in its appointment of Wilson. Given the claims presented, we decline to address that issue now. The appellate opinions do not preclude a finding by the district court that Wilson’s work was “necessary.”

First, appellants argue that the district court clearly erred in finding that Wilson acted within the scope of his appointment when he investigated the transfers of Lawrence Trust assets. We are not persuaded.⁷ The specific allegations made concerning whether Phyllis and Diana improperly transferred assets out of the Lawrence Trust would involve some determination of the motives and circumstances of the transfers, not merely a list of the assets remaining in the Lawrence Trust. Moreover, the district court initially ordered the appointment of a third-party neutral in part because of Phyllis’s failure to cooperate with discovery, refusal to produce documents regarding what assets remained in the Lawrence Trust, and “history of being unwilling to provide any amount of information.” This language and stated justification further indicate that the appointment of Wilson would involve more than an accounting. Finally, there is evidence in the record, including Wilson’s testimony, to support the finding that the scope of appointment included authority to investigate undisclosed transfers of assets. Because the record reasonably supports a finding that an investigation was required for Wilson to fulfill his court-appointed duties, we are not left with the firm conviction that the district court made a mistake.

Second, appellants also challenge the district court’s finding that the fees incurred by Wilson were incurred in good faith. Appellants argue that there is evidence in the record to support a finding that Wilson was biased and therefore did not act in good faith. This

⁷ We are also concerned that appellants have not preserved a challenge to the scope of Wilson’s appointment for appellate review. The parties agreed to Wilson’s appointment and appellants did not challenge its scope at that time. In addition, in its April 2019 order, the district court found that Wilson was appointed “to investigate, report, and account for the assets” of the Lawrence Trust. Appellants did not challenge that finding in *Schwagerl I*, *II*, or *III*.

argument, however, misstates the standard of review. As noted above, under clear error review we do not reweigh conflicting evidence or “engage in fact-finding anew, even if the court would find the facts to be different if it determined them in the first instance.” *Kenney*, 963 N.W.2d at 221-22 (quotation omitted). The district court received evidence regarding Wilson’s work, including the 1,682 pages of documents that he reviewed and the names and substance of the interviews that he conducted. Because this evidence indicates that Wilson conducted a “thorough investigative process” based on “sound analysis and substantial documentary evidence,” we affirm the district court’s factual finding that Wilson did not act in bad faith.

Third, appellants assert that the district court clearly erred in finding that Wilson’s efforts benefitted the Phyllis Trust.⁸ Again, we are not persuaded. Appellants merely restate their belief that Wilson acted in bad faith, and for this reason, his work did not benefit the Phyllis Trust. As noted above, we discern no error in the district court’s factual findings regarding Wilson’s impartiality. In addition, appellants again misstate the standard of review, essentially urging this court to reweigh conflicting evidence regarding how Wilson’s work impacted the Phyllis Trust and its beneficiaries. Given the arguments presented, we affirm the district court’s factual finding that Wilson’s efforts inured to the benefit of both trusts. Both trusts also relied on Wilson’s report throughout the proceedings and benefitted from knowledge of the information presented in the report.

⁸ Appellants also argue that Wilson’s work did not benefit the Lawrence Trust. In doing so, they reiterate their argument that in light of *Schwagerl I, II, and III*, Wilson’s appointment was not necessary. For the reasons noted above, we do not agree that the appellate opinions preclude a finding that Wilson’s work benefitted the Lawrence Trust.

II. *Challenge to the District Court's Inclusion of Trustees for Both Trusts in its Order*

Appellants also challenge the decision to order judgment against the Phyllis Trust, arguing that the district court had no authority to do so. We disagree for two reasons.

First, appellants' argument mischaracterizes the district court's order. Contrary to appellants' argument, the district court's order did not make the Phyllis Trust liable to Wilson. Rather, the order contemplated *one or both* trusts paying Wilson because it made the fees "chargeable to the *Lawrence B. Schwagerl Trust Under Agreement Dated April 9, 1999*, and/or the *Phyllis B. Schwagerl Trust Under Agreement Dated April 9, 1999*." In addition, the district court's order further clarified that Diana and Jerome have discretion to apportion the fees between the trusts, stating that the fees are "to be apportioned as determined at the discretion of trustees Diana Miller and Jerome Schwagerl."

Second, appellants' argument relies on a misstatement of Minnesota Statutes section 501C.0709(a) (2022). That provision states that a trustee is entitled to reimbursement "out of the trust property." Minn. Stat. § 501C.0709(a). Appellants argue, based on various cases, that this statute precludes the district court from making the Phyllis Trust liable to Wilson.⁹ Another provision of the statute, however, states that principles of equity supplement the statutory provisions. Minn. Stat. § 501C.0106 (2022); *see also Plunkett v.*

⁹ We are concerned that appellants provide no analysis involving principles of statutory interpretation to support their understanding of the statute. Instead, they direct our attention to passing statements in previous cases concerning whether a trustee should be paid from the trust the trustee was appointed to administer. None of the cases concern the unique interrelated trust arrangement here or any allegations that the trustees of one trust improperly transferred assets to a second trust. Without more analysis to support their interpretation of the statute on which they rely, we decline to adopt appellants' argument.

Lampert, 43 N.W.2d 489, 493 (Minn. 1950) (recognizing the administration of trusts is “equitable in character”). Appellants present no argument that the district court’s order was inequitable, and, as noted above, we affirm the district court’s finding that Wilson’s work benefitted both trusts. Without some analysis or argument,¹⁰ and in the absence of an explanation of how appellants were prejudiced by the district court order directing Diana and Jerome to apportion the fees between the trusts, we decline to conclude the order was inequitable. *See State, Dep’t of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (noting that appellate courts decline to reach issues that are inadequately briefed); *In re Est. of King*, 992 N.W.2d 410, 418 (Minn. App. 2023) (applying *Wintz* in a trust-related dispute); *see also Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (“Although error may exist, unless the error is prejudicial, no grounds exist for reversal”); *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (1944) (“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.”).

Affirmed.

¹⁰ Although appellants do argue that the Phyllis Trust should not be required to pay Wilson, the specific reasons given derive entirely from appellants’ other arguments regarding whether his appointment was necessary, whether the scope of the appointment included authority to investigate, and whether he was impartial—all arguments addressed above.